

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEBBIE DOWELL,

Plaintiff,

v.

RYAN K. ZINKE, Acting Director,
Department of the Interior, et al.,

Defendants.

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NO. 3:19-cv-00105
JUDGE RICHARDSON

ORDER

Pending before the Court is a Report and Recommendation of the Magistrate Judge (Doc. No. 24), recommending denial of the motion to dismiss Marlene Kelley under Fed. R. Civ. P. 12(b)(1) due to lack of subject-matter jurisdiction (Doc. No. 14). No objections to the Report and Recommendation have been filed. The Court has reviewed the Report and Recommendation and relevant portions of the file. The Report and Recommendation is adopted and approved.

As stated in the Report and Recommendation, Plaintiff has sufficiently alleged state law claims against Defendant Kelley. The crux of the motion to dismiss, Defendants' assertion that Kelley was at all times acting within the scope of her employment, is a factual contention that cannot be entertained on a facial challenge to subject-matter jurisdiction under Rule 12(b)(1), where the Court must accept the contrary allegations of the Complaint as true.

Accordingly, Defendant's Motion to Dismiss Improper Party (Doc. No. 14) is **DENIED**.

IT IS SO ORDERED.



ELI RICHARDSON
UNITED STATES DISTRICT JUDGE